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# NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

## CHAPTER Env-Wr 900 OFFICIAL LIST OF PUBLIC WATERS

### PART Env-Wr 901 PURPOSE AND APPLICABILITY

Env-Wr 901.01 Purpose. The purpose of these rules is to develop a standard for the publication and maintenance of the official list of public waters required by RSA 271:20.

Source: #8383, eff 6-22-05

Env-Wr 901.02 Applicability. These rules shall apply to the creation and maintenance of the official list of public waters.

Source: #8383, eff 6-22-05

### PART Env-Wr 902 DEFINITIONS

Env-Wr 902.01 “Department” means the New Hampshire department of environmental services.

Source: #8383, eff 6-22-05

Env-Wr 902.02 “Official list” means the official list of public waters required by RSA 271:20.

Source: #8383, eff 6-22-05

Env-Wr 902.03 “Status” means whether a water meets one or more of the categories listed in Env-Wr 903.01 and, if so, which one(s).

Source: #8383, eff 6-22-05

Env-Wr 902.04 “Water” means a water body or watercourse.

Source: #8383, eff 6-22-05

### PART Env-Wr 903 CONTENTS AND DETERMINATIONS

Env-Wr 903.01 Waters Listed.

(a) The official list shall include the following:

(1) “State-owned public waters” as described in RSA 271:20, I, namely “all natural bodies of fresh water situated entirely in the state having an area of 10 acres or more... [and] those bodies of water located on the borders of the state over which [the state] has exercised ... jurisdiction”;

(2) “Public waters” as defined in RSA 483-B:4, XVI (b) and (c), namely:

“(b) Coastal waters, being all waters subject to the ebb and flow of the tide, including the Great Bay Estuary and the associated tidal rivers.

(c) Rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the now current version of the U.S. Geological Survey 7½" topographic maps”;

(3) “Public water” as defined in RSA 215:A-1, namely “any public body of water as defined by RSA 271:20 which has been frozen over and is sufficient to hold any person or vehicle, whatsoever”;

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- (4) “Public waters” as defined in RSA 482-A:16 and RSA 482-A:21, namely “all natural ponds of more than 10 acres”;
  - (5) “Publicly-owned bodies of water” or “public-owned water bodies” as defined in RSA 482-A:16, namely, “those bodies of water whose artificial high water level is maintained by the state’s exercise of its flowage rights on these ponds”;
  - (6) “Public bodies of water” as defined in RSA 233-A:1, namely “public waters as defined in RSA 271:20 and any impoundment of a stream, lake, pond, or tidal or marine waters of 10 acres or more, or any other body of water owned by the state or by a state agency or department”;
  - (7) “Public waters” as defined in RSA 371:17, namely “all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the [public utilities] commission may prescribe”;
  - (8) “Great pond” as defined by RSA 4:40-a, namely “a public water of more than 10 acres”;
  - (9) Public tidal waters as described by the New Hampshire supreme court in Purdie v. Attorney General, 143 N.H. 661 (1999); and
  - (10) Public rivers or streams as described by the New Hampshire supreme court in St. Regis Paper Co. v. New Hampshire Water Resources Board, 92 N.H. 164 (1942).
- (b) The official list shall indicate which statute(s) each listed water is subject to.

Source: #8383, eff 6-22-05

Env-Wr 903.02 Determinations. The department shall determine the status of water in New Hampshire based on best available evidence, including the following:

- (a) Geographical information system database sets created or maintained by:
  - (1) The department;
  - (2) The U.S.D.A. Natural Resources Conservation Service;
  - (3) The United States Geological Survey (“USGS”);
  - (4) The United States Environmental Protection Agency;
  - (5) The complex systems research center of the university of New Hampshire; or
  - (6) Any combination of the above.
- (b) Current and historic USGS topographic mapping;
- (c) Other historic maps;
- (d) Historic photographs, including aerial photographs;
- (e) Depth contour mapping;
- (f) Physical evidence such as shoreline soil, slope and vegetative conditions;
- (g) Historical public uses of the water; and

- (h) Any other data collected by the department to determine the status of a water.

Source: #8383, eff 6-22-05

Env-Wr 903.03 Publication of the Official List.

- (a) The department shall make paper copies of the official list available at its offices.
- (b) The department shall post the official list on its internet site.
- (c) The department shall provide 25 paper copies of the official list to the New Hampshire state library.

Source: #8383, eff 6-22-05

PART Env-Wr 904 REVIEW AND REVISION OF THE OFFICIAL LIST

Env-Wr 904.01 Initiation of Investigation. The department shall conduct an investigation into the listed status of a water:

- (a) If it receives credible information in writing indicating that a status of a water is incorrect; or
- (b) At the request of the attorney general.

Source: #8383, eff 6-22-05

Env-Wr 904.02 Posting of Notice. When the department initiates an investigation pursuant to Env-Wr 904.01, it shall issue a notice.

- (a) The notice shall indicate:
  - (1) The name(s) of the water and the town(s) in which the water is located;
  - (2) The current listed status of the water;
  - (3) The time period during which the department will accept factual information for consideration in its decision; and
  - (4) The name and telephone number of the contact person at the department.
- (b) A copy of the notice shall be sent to:
  - (1) The attorney general;
  - (2) The department of resources and economic development;
  - (3) The fish and game department;
  - (4) The office of energy and planning;
  - (5) The department of safety;
  - (6) The department of transportation;
  - (7) The public utilities commission; and
  - (8) The community(ies) in which the water is located.

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- (c) The department shall post the notice on its website.

Source: #8383, eff 6-22-05

Env-Wr 904.03 Time for Public Comment. Any person may provide factual information pertaining to the status of the water to the department within 30 days of the posting of the notice.

Source: #8383, eff 6-22-05

Env-Wr 904.04 Decision.

- (a) The department shall issue a final determination on the status of the water within 120 days of the posting of the notice.
- (b) A copy of the decision shall be sent to all agencies which received a copy of the notice.
- (c) The decision shall be posted on the department's website.
- (d) If the decision results in a change to the official list, the department also shall revise the official list by publishing the information that has changed in the same manner as the original list was published.

Source: #8383, eff 6-22-05

### APPENDIX

Rule Section(s)	Statute(s) Implemented
Env-Wr 900	RSA 271:20, II